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EXAMINER

KRAMER, DEAN J

ART UNIT PAPER NUMBER

3652

DATE MAILED: 12/11/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

10/049,289

Applicant(s)

BALDESBERGER, FIDES P.

Examiner

Dean J. Kramer

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 21 October 2003.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 11-26 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 11-16 and 22-26 is/are rejected.
- 7) ☒ Claim(s) 17-21 is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.
- a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- ☐ Notice of References Cited (PTO-892)
- ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_
- ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- ☐ Notice of Informal Patent Application (PTO-152)
- ☐ Other: \_\_\_\_\_

### DETAILED ACTION

The amendment filed October 21, 2003 and the remarks presented therewith have been carefully considered. However, they are not deemed to be fully persuasive.

#### ***Claim Rejections - 35 USC § 112***

1. Claim 26 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 26 depends from claim 1 which has been canceled.

#### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

2. Claims 11-16 and 22-26 (assuming claim 26 depends from claim 11) are rejected under 35 U.S.C. 103(a) as being unpatentable over Sergeant in view of Kaufman.

Sergeant shows a pair of tweezers comprising two legs (12,16 and 14,18) connected with each other at their upper ends forming an apex area (2) and are capable of reversible engagement at their opposite ends (16B,18B) upon manual closure pressure (see Fig. 2). These tweezers are fabricated as an extrusion profile sliced into

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multiple tweezer mechanisms (see col. 3, lines 19-28). The extruded Sergeant tweezers are not specifically disclosed as being formed from "light metal".

However, Kaufman shows a one-piece tweezer device that can be formed of various elastic materials such as "spring steel" or "aluminum" (see col. 3, lines 62-66).

Accordingly, it would have been obvious to one of ordinary skill in the art at the time the invention was made to form the Sergeant tweezers from an elastic light metal, such as spring steel or aluminum, as taught by Kaufman as an alternative yet functionally equivalent means of creating a resilient and durable set of tweezers.

It is pointed out that the apex (2) of Sergeant's tweezers is shown to be at least 20% larger than the thickness of leg portions (12,14). Likewise, bulge portions (12A,14A) are at least 30% greater in size than leg portions (12,14).

Regarding claims 12, 13, 22, and 23, the closing force required to close the resulting modified Sergeant tweezers would vary depending on the exact type of metal used and the thickness of the apex and legs thereof.

Regarding claim 26, it is pointed out that the legs of Sergeant's tweezers can be considered *substantially* straight in that a *majority* of each leg (i.e. portions 12 and 14) is straight.

3. Claim 22 is rejected under 35 U.S.C. 103(a) as being unpatentable over either Seyfriedt in view of Kaufman.

Seyfriedt shows metal tweezers having a generally enlarged apex region relative to the leg thickness thereof but does not specifically disclose the type of metal from which it is manufactured nor closure pressure required to bring the free ends of the legs

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to a closed position. The Seyfriedt patent only broadly discloses that its tweezers be formed from a "resilient spring metal" (page 1, line 32).

Kaufman, as was presented above in section 2, discloses an integrally formed pair of tweezers made from one of several mentioned materials including spring steel or aluminum.

It would have been obvious to a person having ordinary skill in the art to dimension the apex of the Seyfriedt tweezers and form the tweezers out of sufficiently light metal, such as aluminum or spring steel as taught by Kaufman, so that it would take at least 150 g. of force to close the tweezers in order for easy manual manipulation thereof.

4. Claim 23 is rejected under 35 U.S.C. 103(a) as being unpatentable over Seyfriedt in view of Kaufman, as set forth above in regard to claim 22, and further in view of British Patent # 2,035,187.

The modified Seyfriedt tweezers were presented supra and would substantially contain all of the structural limitations as broadly as recited in claim 23 except for the legs having enlarged bulge portions along their length.

However, British Patent # 2,035,187 shows a pair of tweezers having a bulge or projection (16a,16b) extending inwardly from each leg so as to limit deformation of the tweezers upon manual compression thereof.

It would have been obvious to one of ordinary skill in the art to provide a bulge on each of the modified Seyfriedt legs similar to that shown in the British ('187) patent in order to limit deformation of the legs upon manual compression.

***Allowable Subject Matter***

5. Claims 17-21 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

***Conclusion***

6. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).


A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dean J. Kramer whose telephone number is (703) 308-2181. The examiner can normally be reached on Mon., Tues., Thurs., Fri. (7:00-5:00).

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Eileen Lillis can be reached on (703) 308-1113. The fax phone numbers for the organization where this application or proceeding is assigned are (703) 305-7687 for regular communications and (703) 305-7687 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

  
Dean J. Kramer  
Primary Examiner  
Art Unit 3652

djk  
December 9, 2003